

MOODY WOODROW TANKSLEY,	)	No. C 11-0259 JSW (PR)
	)	
Plaintiff,	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE IN FORMA PAUPERIS</b>
v.	)	<b>STATUS; TO PAY FILING FEE</b>
	)	
S. ARANDA; J. WILLS; E. BEAM; P	)	<b>(Docket No. 56)</b>
SULLIVAN; G. BIAGGINI; W MUNIZ;	)	
E.B. JONES,	)	
	)	
Defendants.	)	
	)	

Plaintiff, a California prisoner proceeding pro se, has filed this civil rights case under 42 U.S.C. § 1983. Defendants have filed a motion to revoke Plaintiff's in forma pauperis status pursuant to 28 U.S.C. § 1915(g). Although given an opportunity to do so, Plaintiff has not opposed the motion. For the reasons discussed below, the motion to revoke is GRANTED, and Plaintiff is ordered to pay the filing fee within 30 days or the case will be dismissed.

A prisoner may not bring a civil action in forma pauperis under Section 1915(g) "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief

1 may be granted, unless the prisoner is under imminent danger of serious physical  
2 injury." 28 U.S.C. § 1915(g). A prisoner must be given notice of the potential  
3 disqualification under Section 1915(g), by either the district court or the defendants, but  
4 the prisoner bears the ultimate burden of persuasion that Section 1915(g) does not bar  
5 pauper status for him. *Andrews v. King*, 398 F.3d 1113, 1120 (9th Cir. 2005). *Andrews*  
6 also requires that the prisoner be allowed an opportunity to be heard on the matter  
7 before dismissing the action. *See id.* at 1120.

8 For purposes of a dismissal that may be counted under Section 1915(g), the  
9 phrase "fails to state a claim on which relief may be granted" parallels the language of  
10 Federal Rule of Civil Procedure 12(b)(6) and carries the same interpretation, the word  
11 "frivolous" refers to a case that is "'of little weight or importance: having no basis in law  
12 or fact,'" and the word "malicious" refers to a case "filed with the 'intention or desire to  
13 harm another.'" *Id.* at 1121 (citation omitted).

14 After reviewing the orders filed in Plaintiff's prior civil rights cases, *see*  
15 *Andrews*, 398 F.3d at 1120, the Court has found that on at least three prior occasions,  
16 Plaintiff filed cases in federal court that were dismissed on the ground that they were  
17 frivolous, malicious, or failed to state a claim upon which relief may be granted,  
18 including: (1) *Tanksley v. Tulare, et al.*, E.D. Cal. Case No. C 01-6593 AWI-WMW  
19 (July 7, 2006) (civil rights action dismissed for failure to amend after complaint and  
20 first amended complaint dismissed for failure to state a claim upon which relief may be  
21 granted); (2) *Tanksley v. Blackwell, et al.*, E.D. Cal. Case No. C 08-0093 OWW-GBC  
22 (February 9, 2011) (civil rights action dismissed for failure to state a claim upon which  
23 relief may be granted); (3) *Tanksley v. Avenal State Prison, et al.*, E.D. Cal. Case No. C  
24 08-0442 OWW-DLB (April 13, 2009) (civil rights action dismissed for failure to state a  
25 claim upon which relief may be granted); and (4) *Tanksley v. California Department of*  
26 *Corrections, et al.*, E.D. Cal. Case No. C 08-1608 GSA (February 12, 2009) (civil rights  
27  
28

1 action dismissed for failure to state a claim upon which relief may be granted).<sup>1</sup>

2 The foregoing dismissals of Plaintiff's prior civil rights actions for failure to state  
3 a claim upon which relief can be granted in cases in which Plaintiff was proceeding in  
4 forma pauperis qualify as dismissals under Section 1915(g). Furthermore, Plaintiff has  
5 not alleged that he is in imminent danger of any serious physical injury. Plaintiff was  
6 given an opportunity to file an opposition to defendants' motion in which to show that  
7 the foregoing dismissals do not qualify as "strikes" or that he is in imminent danger of  
8 serious physical injury. He has not done so. As a result, he is barred from proceeding  
9 in forma pauperis herein under Section 1915(g), and his pauper status will be revoked.  
10 Plaintiff will be given thirty days in which to pay the full filing fee, and if he does not  
11 do so, this action will be dismissed.

### 12 CONCLUSION

13 The motion to revoke Plaintiff's pauper status (docket number 56) is  
14 GRANTED. Within **thirty days** of the date this order is filed, Plaintiff shall pay the  
15 entire filing fee; if he does not do so, this action will be dismissed.

16 IT IS SO ORDERED.

17 DATED: July 15, 2011



18 JEFFREY S. WHITE  
19 United States District Judge  
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21  
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26 <sup>1</sup>Defendants cite a fifth dismissal, but it was of a petition for a writ of habeas corpus.  
27 Dismissals of habeas petitions do not count as "strikes" under Section 1915(g). *Andrews*, 398  
28 F.3d at 1122.

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MOODY W. TANKSLEY,

Plaintiff,

v.

ARANDA ET AL et al,

Defendant.

Case Number: CV11-00259 JSW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 15, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Moody W. Tanksley F-65317  
Atascadero State Hospital  
P.O. Box 7001  
Atascadero, CA 93423-7001

Dated: July 15, 2011



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk